

December 29, 2008

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654
Email: hearex@metrokc.gov

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0300655**

TILL THON

Code Enforcement Appeal

Location: 11852 11th Avenue South

Appellant: **Till Thon**
11852 11th Avenue South
Seattle, Washington 98168
Telephone: (206) 356-7295

King County: Department of Development and Environmental Services (DDES)
represented by **DenoBi Olegba**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1528
Facsimile: (206) 296-6604

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal with revised compliance schedule
Department's Final Recommendation:	Dismiss violation no. 1, stipulated as resolved; deny appeal with further revised compliance schedule
Examiner's Decision:	Dismiss violation no. 1 as resolved; deny appeal with further revised compliance schedule

EXAMINER PROCEEDINGS:

Hearing opened:	December 6, 2007
Hearing continued on-call:	December 6, 2007
Hearing reconvened:	August 7, 2008
Hearing closed:	August 7, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.

A verbatim recording of the hearing is available in the office of the King County Hearing Examiner. FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On September 26, 2007, the Department of Development and Environmental Services (DDES) issued a Notice and Order to Till Thon and Trinh Dieu that found code violations on an R-6 zoned property located at 11852 11th Ave S in the unincorporated Boulevard Park area. The Notice and Order cited the Noticees with two violations of county code:
 - A. Construction of an accessory structure without required permits, inspections and approvals, and also within the required interior building setback area.
 - B. Construction of an addition to a residence without the required permits, inspections and approvals.

The Notice and Order required compliance by November 26, 2007 by application for and obtainment of the necessary permits, resolution of the setback issue and/or demolition of the unpermitted work as necessary.

2. Till Thon filed an appeal of the Notice and Order. The appeal does not contest the Notice and Order's finding of violations; the appeal claims innocent purchaser status, contending that the property was purchased by the Noticees in August 2005 with the structural components at issue already in place upon their purchase.
3. An appeal hearing was convened on December 6, 2007, and continued on-call pending fulfillment of an informal agreement between the Appellant and DDES for resolution by compliance. In June, 2008, DDES requested that the hearing be reconvened as the agreement had not been fulfilled. The hearing was reconvened on August 7, 2008. At the August 7, 2008 hearing session, DDES stipulated that violation no. 2 (1.B, above) of the Notice and Order had been resolved by permit obtainment for the subject residential addition. With respect to violation no. 1 (1.A, above), the erection of an accessory structure (a carport/storage space) without permits and within the side yard setback, DDES testified that the Appellant had not removed the structure as agreed. DDES also noted that no demolition permit had been applied for.
4. The preponderance of the evidence shows that the subject carport/storage space accessory structure was constructed without the required building permit and also was constructed within the regulatory sideyard building setback area. Violation no. 1 of the Notice and Order is therefore sustained as found by DDES.
5. The preponderance of the evidence in the record demonstrates that the Noticees are innocent purchasers of the violating aspects of the property, and therefore are not responsible parties for the perpetration of the violations. Because they are not the parties responsible for the violating action, they are not subject to penalties; as the current property owners, however, they are required to correct the matter or it is liable to abatement proceedings initiated by the county, with abatement costs chargeable to the Noticees. [KCC 23.02.130.B]

CONCLUSIONS:

1. DDES has stipulated to resolution of violation no. 2 of the Notice and Order, and it shall accordingly be dismissed as resolved.
2. The finding of violation no. 1 in the Notice and Order with respect to the accessory structure is supported by a preponderance of the evidence presented and is sustained. The appeal shall be denied and the Notice and Order sustained in such regard.
3. The perpetration of violation no. 1 is not the responsibility of Till Thon or Trinh Dieu, as it occurred prior to their ownership of the property and has not been shown to have been performed by them personally. Accordingly, pursuant to KCC 23.02.130.B, the finding of violation does not subject them to penalties for the violation, but they are responsible for resolving the violation.
4. The Appellant indicated at hearing an intent to remove the offending structure. Nevertheless, the Examiner shall provide in the compliance schedule the option of pursuing a building permit for the structure.

DECISION:

Notice and Order violation no. 2 regarding construction of an addition to a residence without required permits, etc., is dismissed on a stipulated basis as resolved. Except for the assertion of innocent purchaser status, which is concluded to be correct, the appeal is denied and the Notice and Order sustained with respect to violation no. 1, except that the compliance schedule shall be revised as stated in the following order.

ORDER:

1. If the Appellant/Noticees decide to pursue a building permit for the subject carport/storage space accessory structure, a complete building permit application shall be submitted to the county *by no later than **January 30, 2009***. Included in such application shall be any necessary documentation/materials/statement of intent necessary to achieve resolution of the building setback issue. After submittal, all pertinent timeframes and stated deadlines for additional information, response comments, supplementary submittals, etc., if any, shall be diligently observed by the Appellant/Noticees through to permit issuance and final inspection approval.
2. If the Appellant/Noticees decide not to pursue a building permit for the accessory structure, all pertinent non-permitted structural work shall be demolished and the demolition debris removed from the property *by no later than **February 27, 2009***. (A demolition permit may be required; the Appellant/Noticees shall consult with DDES regarding any such requirement.)
3. In the event that a building permit is sought but then is ultimately denied, the pertinent non-permitted structural work shall be demolished and the demolition debris removed from the property *by no later than **60 days*** after the date of such denial.
4. No fines or penalties shall be assessed by DDES against the Noticees and/or the property for the subject violations, as they are exempted from such imposition by their innocent purchaser status under KCC 23.02.130.B. However, if the above compliance requirements and deadlines are not complied with in full, the county may initiate abatement proceedings and charge abatement costs as provided by county code.

ORDERED December 29, 2008.

Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding Code Enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE AUGUST 7, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0300655.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were DenoBi Olegba, representing the Department and Till Thon, the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for August 7, 2008
Exhibit No. 2	Copy of the Notice & Order issued September 26, 2007
Exhibit No. 3	Copy of the Notice and Statement of Appeal received October 3, 2007
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Photograph of car port

PTD:vsm
E0300655 RPT